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Residential Community Associations

Questions and Answers for Public Officials

Advisory Commission on Intergovernmental Relations

M-166
July 1989

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Preface and Acknowledgments

When considering its recent policy report, *Residential Community Associations: Private Governments in the Intergovernmental System?* several members of the Commission expressed concerns about emerging issues and problems with common interest community associations. Commission members saw the need for a publication to introduce public officials to this growing phenomenon in the residential housing market. This easily readable booklet describes residential community associations (RCAs) and discusses ways in which local governments have responded to them.

Debra Dean is the principal author of this report. ACIR would like to thank C. James Dowden and Doug Kleine of the Community Associations Institute, and Stephen E. Barton and Carol J. Silverman of the Institute for Urban and Regional Development, University of California, Berkeley, for their help and advice in preparing this booklet. At ACIR, editorial and secretarial assistance were provided by Joan Casey and Lori Coffel. The Commission and its staff remain responsible for any errors of omission or commission.

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Contents

How to Use This Booklet 1

General Characteristics of Residential Community Associations 3

1. What is a resider tial community association? 3
2. Are these organizations known by other names? 3
3. What types of RCAs exist? 3
4. What are the major organizational differences among types of RCAs? 3
5. How likely are public officials to come into contact with RCAs? 4
6. Are RCAs a new phenomenon? 4
7. Why did the number of RCAs grow so rapidly? 4
8. What role does local government play in creating RCAs? . 5
9. Do services provided by RCAs substitute for local government services? 5
10. Why have RCAs been called "shadow governments" and "invisible kingdoms"? 5
11. How are RCAs different from local government? 5
12. What is the geographic relationship between RCAs and local governments? 6
13. How are RCAs different from civic associations? What implications does this difference have for local officials? 6
14. Is this form of organization unique to the residential housing market? 7

Issues for Local Officials 9

Before RCAs Are Approved 9

15. Should local officials consider whether to allow territorial RCAs? 9
16. Why do local governments approve private RCA streets, rather than requiring public dedication? 9
17. How much dedication should the public accept? 10
18. If local officials decide not to allow territorial RCAs, what are their options? 10
19. How have special districts been formed in place of RCAs? 10
20. How have special taxing areas been used in place of RCAs? 11
21. How have RCAs formed municipal governments? 11

When RCAs Are in Normal Operation 11
22. How do RCAs begin normal operations? 11
23. What implications does this process have for local officials? 12
24. What are the disadvantages of RCAs. How can they affect local governments? 12
25. What kinds of restrictions exist in RCA communities? 12
26. Do local governments enforce public laws on RCA property? 12
27. Do local governments enforce RCA regulations on RCA property? 13
28. What are RCA members' most common complaints with regard to RCA regulations? How do these complaints affect local government? 13
29. How can RCA regulation of exterior renovations involve local government? 13
30. Is there conflict between RCA regulations and public building and zoning ordinances? 14
31. Under what conditions might local officials want to override RCA restrictions? How can they do it? .. 14
32. How do RCAs obtain animal control from local government? 14
33. How do RCAs arrange for public enforcement of traffic and parking regulations? 15
34. What types of arrangements exist between RCAs and local governments with regard to private street maintenance and repair? 15
35. What types of consideration do local governments give for trash collection? 16
36. Do associations request tax rebates or other considerations from local government for privately provided services? .. 16
37. What property tax issues arise in RCAs? 16
38. Does the resolution of disputes between RCA members and associations involve local government? 17
39. Are courts the only governmental avenue for resolving disputes within RCAs? 17
40. Do local governments have legal disputes with RCAs? ... 17
41. Are RCAs active in local government affairs? 18
42. How do RCAs perceive their relationships with local government? 18
43. Do associations work to influence local government decisions? 18

For RCAs at Risk: 18
44. How likely is it that an RCA will go bankrupt? 18
45. What responsibility will local government have in the event of an RCA bankruptcy? 19
46. What measures may RCAs and local governments take to avoid bankruptcy, if an RCA gets into financial difficulty? 19

47. Do RCAs go out of existence by means other than bankruptcy? How? How does that affect local government? 19
48. Do disputes between RCA members and associations create a risk of organizational failure and the need for public intervention? 20

Issues for State Officials 21

49. Do states regulate RCAs? 21
50. Is the need for state regulation likely to grow? 21
51. Is there relevant suggested state legislation? 22

Issues for Federal Officials 23

52. Will there be a need to reconsider the tax treatment of fees paid to RCAs? 23
53. Do HUD and VA review RCA projects before deciding whether to insure loans to homeowners? 23
54. How can hard times among RCAs affect HUD and VA mortgage insurance funds? 23
55. What other problems can occur? 23

Selected Bibliography 25

How to Use This Booklet

This booklet is intended to introduce public officials to the growing phenomenon of residential community associations (RCAs). These private organizations, created through covenants on residential real estate, are exercising some functions similar to local governments and are a significant factor in the privatization of local public services. Although no formal count exists, informed observers believe that there are approximately 130,000 RCAs, affecting some 25 to 30 million people. While not a new phenomenon, the number of these organizations has grown rapidly since 1960, when it is estimated that fewer than 5,000 existed.

This booklet is organized in a question and answer format. The first section describes RCAs, what they are, what they do, and what general implications they have for public officials. Section two discusses the principal issues that RCAs may pose for local public officials (1) before an RCA is authorized, (2) during the RCA's normal operating life, and (3) when RCAs are at risk. The final two sections deal with issues for state and federal officials.

This booklet is only a general guide to RCAs. Each RCA and each local government is different. Variations in state laws, development patterns, and economic growth all affect the existence and operation of RCAs.

Additional information about RCAs may be obtained from the Community Associations Institute (CAI). CAI is an independent nonprofit organization formed in 1973 to guide homeowners associations. It is composed of individual RCAs, public officials, developers, property managers, lawyers and other professionals involved in RCA operations. Questions concerning development standards for RCAs, may be addressed to the Urban Land Institute and the American Planning Association. Addresses of these organizations are listed below:

Community Associations Institute
1423 Powhatan Street, Suite 7
Alexandria, Virginia 22314

Urban Land Institute Inquiry Service
1090 Vermont Avenue, NW
Washington, DC 20005

American Planning Association
1313 East 60th Street
Chicago, Illinois 60637

In addition, information may be obtained from some local consumer affairs offices and departments, such as planning, police, and public works.

General Characteristics of Residential Community Associations

1. **What is a residential community association?**

   A residential community association (RCA) is a mandatory membership organization established through conditions, covenants, and restrictions attached to the deed to real property, typically in residential areas. Purchasers of property become members of the association automatically. They are required to obey association regulations and are liable for fees and special assessments. In return, they enjoy services provided by the association and use of private association facilities. The organization or its members typically own property in common.

2. **Are these organizations known by other names?**

   Other terms commonly used for this type of association are: condominium association, mandatory homeowners' association, common interest development, and planned development.

3. **What types of RCAs exist?**

   One way in which RCAs can be distinguished is on a territorial basis. Some associations, chiefly high rise condominiums constituting a single building, are responsible for relatively little real estate or land management. These are "nonterritorial" RCAs. Other associations, however, are responsible for tracts of land, sometimes quite large. As a part of this responsibility, they may maintain roads, parking lots, parks, swimming pools, tennis courts, and lakes or beaches. Because they cover a larger amount of territory, they can be called "territorial" RCAs.

   Although both nonterritorial and territorial RCAs may assume some functions that are similar to those of local government, the territorial RCAs generally bear a greater resemblance to communities organized under a formal local government. This booklet focuses on territorial RCAs.

4. **What are the major organizational differences among types of RCAs?**

   The primary difference is in regard to what is owned and by whom. In a mandatory homeowners' association, the members own their unit and lot. The association *owns* and *maintains* common property, such as parks, play areas, parking lots, and swimming pools. In a condominium owners' association, units are owned individually; however, the common prop-

erty is held *in undivided interest* by all owners simultaneously. The condominium association does *not* own any property; instead, it manages the common property on behalf of the owners. A cooperative association can take two forms. The first form is a stock cooperative in which the individual does not own any real property. Instead, he or she buys shares in a corporation that owns the property and is responsible for its maintenance. In the second form, called community apartments, all owners share undivided interest in the *entire* property, including individual units. The association manages the property for the common owners.

For the purposes of local government officials, the legal differences between these associations are relevant chiefly with regard to property tax assessment procedures.

5. **How likely are public officials to come into contact with RCAs?**

Public officials in most states are increasingly likely to come into contact with this type of organization. While there is no formal, adequate count of RCAs, informed observers estimate that as many as 130,000 RCAs exist, affecting approximately 12 percent of the American population – as many as 25 to 30 million people.

6. **Are RCAs a new phenomenon?**

No. The first RCAs in this country were formed in the 19th century. However, rapid growth in the numbers of these organizations has occurred since 1960. It is estimated that fewer than 5,000 RCAs existed nationally in 1960, compared to some 130,000 today. This represents a 26-fold increase in the number of RCAs in less than 30 years.

7. **Why did the number of RCAs grow so rapidly?**

There are several factors encouraging RCA growth, resulting primarily from interactions between the housing market and local governments. Developers, homeowners, and governments potentially benefit from RCAs.

Generally, RCAs allow developers to produce more attractive and marketable homes, which include a livable environment, not just a house. The RCA also gives the developer options to cut costs and to work within a more flexible regulatory framework.

Homeowners receive a range of choices in communities and service packages. Examples of these services include trash collection, snow removal, street repair, groundskeeping, and recreation facilities. Homeowners also benefit from any cost savings that the developer is able to capture through regulatory flexibility. In some communities, owners can gain comparatively affordable housing. RCAs also permit home ownership in urban locations that would be beyond the means of most middle class buyers. Thus, goals for meeting the needs of special market niches are facilitated by RCA development.

When RCAs are significantly self-financing, local governments find their tax base expanded, potentially without comparable expansion in the demand for those public services the RCA provides itself. Thus, RCAs can

relieve local governments and existing taxpayers of some of the responsibility for financing new infrastructure and services.

8. **What role does local government play in creating RCAs?**

   The role of local government in creating RCAs occurs through the land use planning, zoning, subdivision, and permit processes. Local governments authorize the building of residential subdivisions, including RCA communities.

9. **Do services provided by RCAs substitute for local government services?**

   RCAs provide a wide variety of services, some of which substitute for services provided to other communities by local government. Other RCA services are provided in addition to local government services.

   The Advisory Commission on Intergovernmental Relations and the Community Associations Institute jointly conducted a nationwide survey of RCAs in 1988. The results of the survey show that more than 90 percent of responding RCAs provided grass cutting and tree and shrubbery trimming. More than 70 percent reported providing trash collection, exterior painting, and parking lot repair. In the snowbelt, 87 percent of the associations reported providing snow removal. Also provided by majorities of responding associations were swimming pools (67 percent), street repair (65 percent), street lighting (58 percent), and sidewalks (59 percent). The survey asked about 18 specific services; a majority of associations reported providing 10 or more of them. It should be noted that these data apply only to CAI members. RCAs that are CAI members are often larger organizations. Smaller organizations may not know of CAI, or may not be inclined to become members.

10. **Why have RCAs been called "shadow governments" and "invisible kingdoms"?**

    RCAs are private organizations that resemble local governments. Indeed, they assume some functions similar to those also provided by local governments, including service provision and land use and other regulation. The RCA is responsible for enforcing its rules and regulations. Dues and fees resemble taxes, in that payment is involuntary. The organization is governed by an elected board.

11. **How are RCAs different from local government?**

    RCAs are private organizations managing private property. This has an impact on RCA-government relations in terms of service delivery and enforcement of regulations.

    Given that RCA services are privately financed, they reduce local government expenses compared to public provision of those services to the RCA community. RCA members are usually taxed for services they do not receive from local government, but instead pay for privately. This has generated requests that local government provide tax considerations to RCA members. (See also questions 36-37.)

Services in RCAs are financed on the principle of fiscal equivalence, that is, "you get what you pay for, and you pay for what you get." Thus RCAs ordinarily do not redistribute services from richer to poorer members, although some modest redistribution occurs where dues are apportioned according to home unit size.

RCAs are not subject to all of the constitutional and statutory restraints imposed on public organizations. Because RCAs are private, they usually are not subject to election, public meeting, and public access laws. RCA voting procedures generally do not operate on the basis of one resident, one vote. Instead, votes often are apportioned only to owners and may be weighted to reflect the square footage of each owner's unit.

Furthermore, RCAs do not have powers and immunities similar to local government. Recent trends indicate that both local elected of ficials and RCA boards of directors are vulnerable to lawsuits from individuals. But, as a general rule, RCA boards are more vulnerable than elected officials. RCAs also do not have the "police power" of local government for rules enforcement and must rely on civil court powers.

12. What is the geographic relationship between RCAs and local governments?

RCAs exist within existing governmental boundaries. They receive certain services from local jurisdictions, and members pay local taxes. However, RCAs are organizationally separate from municipal and county governments. RCAs come into contact with the federal and state governments, counties, municipalities, school districts, and special districts. The issues connecting RCAs and governments are varied, but they include service delivery, taxation, subdivision regulation and zoning, environmental laws, and other regulations.

Because they are growing in numbers and population, RCAs pose both challenges and opportunities to homeowners and government officials. Furthermore, life inside and outside of RCA communities can represent two different worlds in terms of service levels, citizenship and governance, and financial responsibilities and property rights.

13. How are RCAs different from civic associations? What implications does this difference have for local officials?

The primary difference is that membership in the RCA is included in the conditions, covenants, and restrictions (CC&Rs) attached to deeds on real property. Membership is mandatory for owners, buf is often prohibited for renters. This contrasts with civic associations, in which membership is voluntary and not included in the deed.

This has two implications for local government officials. First, RCAs are permanent organizations with which local officials will have to deal over the long term. Second, RCA boards are responsible for the enforcement of CC&Rs and can turn to the courts, if necessary, to enforce their rules. This poses the possibility of increased caseloads for local courts and increased numbers of complaints for local consumer protection agencies.

14. Is this form of organization unique to the residential housing market?

No. Business condominiums exist in some metropolitan areas. These associations operate much like residential condominium associations, but cater to the needs of business firms. Some associations combine business and residential uses.

RCAs are found also in vacation and resort areas. Some of them are composed of houses and multifamily buildings. Others, however, involve the purchase of camping lots or mobile homesites.

A relatively recent development has been the undivided interest (UDI) resort. This concept is broadly similar to that of a condominium, in that it involves common interest ownership. All of the owners own the development together, in "common interest," and share access. The resort provides the owner with unrestricted and exclusive access to private resort facilities.

Issues for Local Officials

Before RCAs Are Approved

15. Should local officials consider whether to allow territorial RCAs?

One basic issue in authorizing territorial RCAs is whether local officials are willing to permit the construction of private facilities that may not meet public design standards. If these facilities remain in private hands, local government will not be affected. However, the presence of nonstandard facilities may make it difficult for the local government to accept public dedication if that becomes necessary at a later date.

When facilities are built and maintained at private expense, the local government may realize substantial savings, compared to the outlays required for public construction and maintenance of streets and other services. In an era of increasingly tight public budgets, this represents a substantial advantage to local government. In addition, RCA subdivisions increase the local property tax base without necessarily increasing governmental expenditure commitments.

Another question revolves around citizenship and community feeling. RCA members are citizens of the local governmental jurisdiction and members of a private community organization. This may mean that RCA members will identify more closely with their RCA community than with the local government jurisdiction.

There also are relevant questions with regard to consumer protection. For example, should local or state governments compare the cost of the individual units, the financial resources of the likely buyers, and the prospective costs of services to ensure that homeowners will be able to finance the RCA? Financial failure or instability can pose problems for local government.

Local officials also may want to consider the importance of demographic diversity in their jurisdiction. Will RCA communities homogenize or diversify the area?

16. Why do local governments approve private RCA streets, rather than requiring public dedication?

RCA-owned streets are created for a variety of reasons. In some instances, developers can save money by building streets to public construction

standards, but not to public design standards. These savings can be passed along to individual purchasers, making housing more affordable. In addition, the private construction and maintenance of streets can remove an expenditure requirement from public capital and operating budgets, as noted above.

Some communities have private streets because homeowners prefer to maintain their own streets privately and to restrict public access. In St. Louis, for example, a number of neighborhoods have formed RCAs to own and maintain residential streets. In many instances, private ownership results in restricting access to the streets and has been credited by a number of observers with reducing crime.

17. How much dedication should the public accept?

Public officials may want to decide whether to accept dedication of RCA facilities, such as streets, parks, playgrounds, and other recreation areas.

Accepting dedication has the favorable effect of ensuring that the facilities are both designed and constructed to public standards. With regard to streets, accepting dedication means that public officials will have greater capacity to alter traffic patterns, if necessary.

On the other hand, accepting dedication will reduce the developer's flexibility because the developer must design as well as construct facilities to public standards. Some facilities, such as swimming pools, are expensive to maintain and may attract only people from the neighborhood rather than the entire community. In addition, accepting dedication of facilities will increase costs to the public sector, compared to private maintenance.

18. If local officials decide not to allow territorial RCAs, what are their options?

There are at least three public alternatives to RCAs in addition to accepting dedication of such common properties as streets and parks. They are forming a special district, forming a special taxing area, and creating a municipal government.

19. How have special districts been formed in place of RCAs?

One type of special district mechanism is used frequently in Texas, where municipal utility districts (MUDs) may be established by a developer for unincorporated property if the adjoining municipality decides not to annex it. The MUD is a public entity governed by the property owners. The developer, being the sole property owner, governs the district at first, and may sell public bonds to finance infrastructure. As development occurs and property is sold to other owners, governing power in the district shifts to the new owners, who take on the long-term debt and responsibility for operating and maintaining community facilities. The district keeps these expenditures out of the municipal and county budgets, but creates an additional local government in the area. This special government, though, would be subject to laws governing the conduct of public business – such as elections and open meetings – that do not always apply to

RCAs. Although the district lifts the imperative for the developer to create an RCA, there may be other reasons to create an RCA in addition to the district. For example, architectural control and private security can be exercised more easily through an RCA.

20. How have special taxing areas been used in place of RCAs?

Another alternative is to establish a special taxing area within the existing local government. Although this mechanism would not take the financing of special facilities and services for the new development out of the local budget, it would create a special source of revenue and a special level of service for the new neighborhood that would not affect the tax rates of other citizens in the larger community. Special tax districts have been used in Florida, Arizona, California, Colorado, Vermont, Pennsylvania, and Connecticut. In Connecticut, some 20 condominium associations have formed special taxing districts since 1977. These areas are governed by the local government in which they are located, and taxes paid to these areas, in lieu of association fees, are deductible from federal income taxes.

To bring citizen involvement to special taxing areas, an officially recognized "neighborhood advisory council" or some such body could be established with a formal relationship to the governing body of the local government. The council would help the local government determine how to spend the funds generated by the special taxing area for the benefit of that area. This mechanism would keep many of the functions that an RCA might perform in the public arena, subject to public procedures. However, it probably would not serve easily some potential RCA functions, such as architectural control and private security.

21. How have RCAs formed municipal governments?

A third alternative is for the RCA to form a municipal government. One of the first associations to do so was the Kensington Association in Long Island, New York. A village coterminous with the subdivision was established in 1921 in order to avoid annexation. The Pennsbury Village Condominium in Pennsylvania seceded from Robinson Township and formed its own municipal government in order to avoid hooking into the township's sewer system. Other associations that have formed municipal governments include Lake Waukomis in Platte County, Missouri, and Palos Verdes Estates in California.

When RCAs Are in Normal Operation

22. How do RCAs begin normal operations?

RCAs are launched by the developer. Typically, residential developers purchase land for residential building and create an RCA by attaching conditions, covenants, and restrictions to deeds as developed properties are sold. The developer manages the association during much of the construction phase of the project. After a percentage of the units is sold (usually 50 percent to 75 percent), a transition begins. The unit owners begin to assume responsibility for the organization, but the developer retains a voice in RCA affairs, and in some instances retains some management responsibilities. After all units are sold, the developer leaves the organization, and it is totally under the management of the unit owners.

23. What implications does this process have for local officials?

Residential developers are the "founding fathers" of most RCA communities. The restrictions they write into the covenants can greatly influence the long-term financial and organizational viability of the association. In addition, the nature and extensiveness of common facilities built, the amount of reserve funds the developer provides the association, the existence of long-term contracts between developers and property management companies, and the originally established homeowners' fees can have great impact on the future finances of the RCA. If the initial financial setup is not sound, trouble may occur later. (See also questions 44-47.)

24. What are the disadvantages of RCAs. How can they affect local governments?

The primary disadvantage is that RCA communities typically restrict property rights. These restrictions can be intrusive, at times, imposing significant limitations on lifestyles, limits that are not present in most non-RCA communities.

There is considerable evidence that many people do not understand these limitations when they purchase or rent a home in such a community. They may become aware of covenant restrictions only when they violate them.

Another potential disadvantage is that homeowners in RCAs are financially interdependent to a greater extent than homeowners in non-RCA communities. Because the owners are responsible collectively for the management and maintenance of the RCA, each homeowner is partially dependent on the financial capacity of the others to ensure that common costs are met. When a significant proportion of the owners cannot afford to maintain services and facilities, the overall financial capacity of the organization is reduced. This is particularly a problem when other homeowners cannot or will not take up the additional financial burden.

Under these circumstances, the RCA may come to the local government for assistance.

25. What kinds of restrictions exist in RCA communities?

Restrictions range from the seemingly trivial (for example, the weight of pets) to the potentially significant (exterior renovation).

The ACIR/CAI survey found that more than 90 percent of responding associations regulated exterior remodeling and that more than 80 percent regulated parking, exterior paint colors, the placement of fences, and exterior antennas. Lifestyle restrictions were less common, but a majority of associations reported regulating pets and noise levels.

26. **Do local governments enforce public laws on RCA property?**

Local governments retain the responsibility for ensuring the basic health and safety of citizens in both RCA and non-RCA communities. However, the willingness and capacity of local government to enforce certain regulations is affected by the private nature of RCA property. Local governments sometimes display reluctance to enter private RCA property to enforce animal control, traffic, and parking regulations and to collect trash, unless formal agreements have been established by the RCA to provide for such activities. (See also questions 32-35.)

27. **Do local governments enforce RCA regulations on RCA property?**

The primary responsibility for enforcing RCA regulations lies with the RCA board of directors. However, when the problem cannot be resolved within the association, there is recourse to the courts, or, in some instances, to local consumer protection agencies. (See also questions 38-40.)

28. **What are RCA members' most common complaints with regard to RCA regulations? How do these complaints affect local government?**

The most common complaints appear to involve pets, parking, exterior renovations, and exterior decoration of individual homes or units.

RCA boards of directors are often advised by legal counsel not to grant exceptions to covenants because such exceptions usually will render the covenants impossible to enforce. For example, a Prince George's County, Maryland, court has ruled that individual homeowners cannot receive exemptions from property restrictions that remain in force for other association members.

On the other hand, a court in Massachusetts admonished an RCA board of directors to show "common sense" in enforcing the details of restrictive covenants. Despite this, many attorneys for RCAs continue to advise against granting exceptions.

This rigidity of RCA regulations is relevant to local officials because it is one reason why disputes find their way into the courts or other dispute resolution agencies.

29. **How can RCA regulation of exterior renovations involve local government?**

Commonly, an owner in an RCA community must obtain approval from the RCA's architectural review board before making exterior renovations. When these renovations require a building permit, public approval must be obtained as well. Local governments, of course, enforce their own regulations. But they do not usually enforce detailed RCA architectural controls.

Disputes between individual homeowners and associations involving exterior renovations can spill over into the public arena. For example, an association in Bethesda, Maryland, sued a homeowner who installed fire-safe "look alike" asphalt shingles in place of cedar shingles on his roof. The RCA maintained that the roof detracted from the architectural harmony of the community. Although the court upheld the RCA, the Montgomery County Council reacted by passing public safety legislation to permit homeowners to use such shingles regardless of association rules.

Local government becomes involved in RCA regulations under two circumstances. First, if the homeowner violates public building codes or fails to obtain a building permit, the local government must enforce its own laws. The second way local government can become involved is when an RCA board or an RCA member sues over regulations.

Some local governments such as, Marlton, New Jersey, have agreements with the RCAs not to process building permits in RCA areas without prior signoff by the RCA.

30. **Is there conflict between RCA regulations and public building and zoning ordinances?**

RCA regulations are often more stringent than public building and zoning ordinances and do not ordinarily conflict with them. However, RCA members have been known to obtain public building permits and begin renovations without obtaining RCA permission. Since this does not present a violation of public law, it is not usually a problem for local government. It is, however, a problem for an RCA board that is legally responsible for enforcing the covenants. Some local governments have been willing to cooperate with associations in resolving this issue. (See also question 29.)

31. **Under what conditions might local officials want to override RCA restrictions? How can they do it?**

Local government officials may decide to override certain RCA restrictions on exterior renovations or on homeowner activities. For example, a local government may want to make it possible for a homeowner to install fire-safe asphalt shingles regardless of covenant restrictions. Or government may want to permit homeowners to run publicly needed day care facilities regardless of RCA restrictions. Similarly, aesthetic rules in RCA covenants may prevent homeowners from taking certain conservation steps, such as installing solar energy devices on home exteriors.

Some local governments have overridden covenants through ordinances permitting disputed activities, as, for example, the Montgomery County Council ordinance permitting asphalt shingles that did not meet association restrictions. The state of Maryland has passed legislation permitting homeowners to offer day care services in their homes despite covenants prohibiting the operation of businesses in homes. (See also question 38.)

Some restrictions are not so hidebound. Indeed, many RCAs, such as those in Columbia, Maryland, now have considerable latitude in creating

regulations that are not specified in the real estate covenants. Under these conditions, the covenant can be seen as a "constitution" establishing the RCA. "Legislative" law is left up to the RCA board, rather than being directly included in the covenant. One advantage of this system is that supermajorities, which are needed to change covenant regulations, are not needed to change board-mandated regulations.

32. How do RCAs obtain animal control from local government?

Given that many RCA communities have pet regulations, the RCA itself is primarily responsible for regulating animals. However, when animals are roaming free, or when members refuse to obey association regulations, an RCA may turn to local government for help.

In general, local government officials and employees must have prior permission each time they enter RCA property to collect an animal. One way to avoid the need for case-by-case permission is to establish an agreement between local officials and the RCA. For example, in Fairfax County, Virginia, an RCA can establish a written agreement that permits county animal control officers to enter RCA property. In Tempe, Arizona, the city Department of Building and Safety employs a "nuisance officer" to respond to animal and other nuisance complaints in RCA communities. In Montgomery County, Maryland, a special condominium ordinance treats condominium common areas like public streets and makes it illegal for pet owners to allow their animals to litter association property or unit owners' property.

RCAs have also taken recourse in the courts. In DeKalb County, Georgia, for example, a dog was removed from association premises with the issuance of a restraining order by a Superior Court judge. The animal was not allowed to return to the community. In Sun City, Arizona, a Superior Court judge assessed the owners of a cat over $7,000 in legal fees and ordered them to remove the animal from their condominium because it violated association bylaws.

However, courts do not always rule in favor of RCAs with regard to pet restrictions. For example, an appellate court in Hawaii affirmed a Honolulu Zoning Board ruling in favor of a 1,200-pound hog living in a condominium. The case turned on the definition of "pet." Since the hog was not being kept for sale, stud, or purposes of food, and was not deemed a nuisance, the zoning board and court both ruled against the RCA and permitted the condominium owner to retain the hog.

33. How do RCAs arrange for public enforcement of traffic and parking regulations?

Typically, local governments do not assume responsibility for enforcing private RCA parking or traffic regulations on private streets or in parking lots.

However, some local governments do enforce public parking and other traffic regulations on private streets within or around RCA communities. As with animal control, prior arrangements are generally necessary. For example, the North Valley Lo Condominium in suburban Chicago worked with local government to produce a public parking ordinance

specifically dealing with violations on condominium property and explicitly authorizing police to ticket violators on association property. The Fairfax County, Virginia, Police Department has developed a form letter for RCAs to use in authorizing police to enforce public laws on association property.

34. What types of arrangements exist between RCAs and local governments with regard to private street maintenance and repair?

Typically, RCAs maintain private streets without reimbursement from local government. However, there are exceptions. In Montgomery County, Maryland, an association that grants general public access to association streets and meets other criteria can qualify for tax reimbursements for street maintenance.

In some instances, local governments have been granted easements for street repair and maintenance. A condominium association in Wheeling, Illinois, granted an easement to the village of Wheeling for street maintenance. Schaumburg, Illinois, was granted an easement so that the village can enter association property to maintain water and sewer lines.

A court in Minnesota has ruled that a city can assess an association for street improvements made to streets adjacent to the association's common areas when the association benefits from the improvements.

35. What types of consideration do local governments give for trash collection?

The city of Houston, Texas, provides reimbursements for private trash collections to associations with single family detached houses. Evanston, Illinois, and Sacramento County, California, collect trash from condominiums at public expense. Alexandria, Virginia, offers tax rebates to condominium owners who cannot or do not use city trash collection services. Three small New England condominium associations prevented their town from discontinuing public trash removal services to their condominiums by making an appeal before a town meeting.

36. Do associations request tax rebates or other considerations from local government for privately provided services?

The most common pattern is that local government does not provide any consideration for private provision of services. However, some associations do receive such consideration, particularly with regard to trash collection and street repair. (See also questions 34 and 35.)

37. What property tax issues arise in RCAs?

One major property tax issue regards the assessment of common property owned by RCAs. Where property tax is imposed on common grounds and improvements, the RCA must pay property taxes. However, the added value of these facilities is often also reflected in higher assessments of individual units in the community. Under these circumstances, RCA members feel that they are subject to "double taxation."

Colorado courts have held that the value of the common property is reflected in the value of individual units, and thus common property should be assessed at zero value. Courts in Maryland and New York have

taken a similar approach. In California, Connecticut, Virginia, and Illinois, state laws require that the value of common property be included within the value assigned to individual units and taxed accordingly. The "double taxation" problem occurs most often in homeowners' associations that own common property. It generally does not occur with regard to condominiums because the RCA does not own the common property. Ownership is held jointly by the unit owners. Under these circumstances, property tax assessments of the individual units generally reflect the value of the common facilities.

In addition, common property is usually encumbered by covenants that prevent its sale on the open market. Under these conditions it has, in effect, zero value. Even so, it is frequently assessed at market value and taxed accordingly. Some RCAs have sought changes in assessment procedures to obtain tax relief.

38. **Does the resolution of disputes between RCA members and associations involve local government?**

Many disputes between members and RCA boards of directors are resolved internally without government involvement. However, RCA members and boards of directors have access to the civil courts as a dispute resolution mechanism. For example, in a court case in Columbia, Maryland, a Howard County judge ruled against a homeowner providing day care in her home in violation of association rules. The judge ruled that, although the individual was a licensed day care provider, her activities violated restrictive covenants against operating a business out of her home. Subsequent state legislation exempted in-home day care providers from RCA covenants.

In addition to going to court, many RCAs can enforce covenants by placing a lien against the property of a homeowner who fails to pay dues. These liens have been upheld by the courts and are legally enforceable. For example, the Maryland Court of Appeals has ruled that RCAs can impose liens on the property of members who fail to pay their share of maintenance and operating costs. The state of Maryland has also passed legislation tightening requirements for notice of liens to homeowners.

39. **Are courts the only governmental avenue for resolving disputes within RCAs?**

Some local governments have mediation or arbitration procedures to facilitate dispute resolution outside of the court system. Montgomery County, Maryland, operates a mediation and arbitration program to settle disputes between RCAs and their members. RCAs are required to participate in the program before going to court. However, the decisions resulting from participation are not legally binding, and some disputes do go on to court.

Informal resolution through the intervention of consumer protection agencies, where such local agencies exist, is also a common mode of dispute resolution.

40. **Do local governments have legal disputes with RCAs?**

Local governments rarely have legal disputes with owner-controlled RCAs, except with regard to owner efforts to obtain tax consideration for

services paid for privately, or for the public supply of services. (See also questions 13, 34, and 35.)

Local governments sometimes have disputes with the developers of RCA communities, particularly over nonperformance of work promised when the development was approved by the local government. For example, the Montgomery County, Maryland, Planning Board has filed suit to force a developer to complete promised construction and landscaping.

41. Are RCAs active in local government affairs?

Because they are organized groups of homeowners, RCAs have the potential, and sometimes the incentive, to become involved in local public affairs.

For example, community associations in Highland Beach, Florida, arranged regular meetings with the city manager and other personnel. In Miami, Florida, representatives from area law enforcement agencies are invited to association meetings to discuss security and safety measures. In McLean, Virginia, a condominium association has arranged to have a registrar of voters come to the association to help register residents. In the planned community of Irvine, California, RCA officials appear regularly before the city council.

42. How do RCAs perceive their relationships with local government?

The ACIR/CAI survey indicated that 55 percent of the responding associations felt that cooperation between their association and local government was either excellent or good. A majority of associations rated local government as either "very fair" or "somewhat fair" with regard to all 18 of the specific government activities included in the survey. The activity rated most highly for fairness was police protection, with 71 percent rating local government as either "very fair" or "somewhat fair." The activity regarded as least fair was local government taxes. Twenty-seven percent of the community association officials rated local taxes as either "somewhat unfair" or "very unfair."

43. Do associations work to influence local government decisions?

Many associations do work to influence local and state government, especially about particular services and issues. For example, an RCA in Texas was concerned about a potential condemnation of association property that could result from a city annexation plan. An association in North Carolina has worked with local government to provide bicycle paths and pedestrian walkways along major roads.

The ACIR/CAI survey revealed that 37 percent of the CAI member associations reported attempting to influence local government about at least five types of services or issues. (The survey asked about a total of 18 services and issues.) Forty-five percent of associations reported attempting to influence local government on one-four services or issues. Only 18 percent reported no attempt to influence local government. (Again, note that CAI member organizations are typically larger than nonmember organizations.)

For RCAs at Risk

44. How likely is it that an RCA will go bankrupt?

There have been few studies of RCA financial operations. One such study was conducted by the HUD Region 9 office in San Francisco in the early 1970s. It found that very few RCAs actually go bankrupt. Instead, RCA members typically take action, when they get into difficulty, to improve the financial condition of their association and thus prevent bankruptcy. The study found that RCA members usually recognize financial problems and take steps themselves to collect dues, make repairs, enforce regulations, and regularize accounting procedures in order to resolve the problems before the RCA becomes insolvent. (See also question 46.)

45. What responsibility will local government have in the event of an RCA bankruptcy?

In the event of a bankruptcy, local government might be asked to undertake the maintenance and/or operation of private RCA facilities, especially streets, parks, swimming pools, and other recreation facilities. Where such facilities do not meet public standards, a question arises about the ability of local government to accept responsibility.

46. What measures may RCAs and local governments take to avoid bankruptcy, if an RCA gets into financial difficulty?

The HUD Region 9 study found that RCAs evolve through several phases of development in which members take increasing responsibility for the successful operation of the organization. Critical to this process is recognition by the members that they must accept financial responsibility for their organization and that neither developers nor governments can, or will, run the organization for them over the long term. Of course, where members do not have the financial capacity to maintain the organization, their willingness to take responsibility, while laudable, may be insufficient.

A problem that developers face is the incentive to keep RCA fees low in order to attract purchasers. As long as the developer is funding a large portion of the association budget, low fees may not be a problem. However, when the association is turned over to its members, low fees may harm the association's financial viability. Because fee increases must commonly be approved by supermajorities of the members, it may not be possible for the RCA board to increase fees enough to cover expenses.

Consumer education is one of the best ways to avoid bankruptcy and other financial problems, so that home purchasers can make an informed financial decision before buying a home in an RCA community. (See also question 49.)

47. Do RCAs go out of existence by means other than bankruptcy? How? How does that affect local government?

RCAs sometimes transform themselves fully or partially into local governments or special taxing districts. This does not usually involve the to-

tal dissolution of the RCA. Instead, certain service functions are transferred to the public agency, while architectural restrictions and other duties are retained by the private association. (See also questions 18-21.)

The implications of creating public entities and transferring functions to them vary from state to state, depending on state law.

Some RCAs may effectively go out of existence if the community is taken over by a single owner and turned into rental property. In such instances, the single property owner is the RCA.

48. Do disputes between RCA members and associations create a risk of organizational failure and the need for public intervention?

Disputes between RCA members and boards of directors do not ordinarily precipitate overall organizational failure or require local government takeover of the association. However, disputes can provoke hostility among members and between members and RCA boards. Under these circumstances, it is quite natural for the disputants to turn to local government for help in resolving the problem.

Issues for State Officials

49. Do states regulate RCAs?

Because condominium ownership once represented a new form of real estate ownership, it had to be specifically authorized by state laws.

However, relatively few states regulate the activities or creation of condominium or homeowners' associations as such. One exception is Florida, which has a Bureau of Condominiums empowered to examine condominium documents, educate the public about condominium ownership, and investigate alleged violations of condominium laws.

California has a uniform law regulating condominiums, homeowners' associations and cooperatives. Under this law, RCAs are required to do a reserve study estimating the useful life of common properties, such as streets, swimming pools, and parking lots. Each association also must have a financial plan explaining how the association will finance repairs, renovations, and replacement of facilities. Combined with disclosure laws, these requirements, when complied with, give buyers the opportunity to tell whether they are likely to face large additional capital expenses after buying into an RCA.

The state of Maryland recently enacted a statute requiring RCAs to register with their county clerk's office. This law also requires sellers of RCA homes to disclose covenants and RCA regulations to purchasers, along with descriptions of streets, parking areas, swimming pools, or other common facilities owned or maintained by the association. New amendments to the Maryland law ensure that owners, as opposed to tenants, are notified of the association's intent to file a lien. The notice would not be deemed to have been fulfilled unless the owner signed a receipt for a certified letter.

Virginia also has enacted a disclosure law and regulations affecting association operations. The measure provides that association records be open for member inspection.

50. Is the need for state regulation likely to grow?

Current estimates are that some 25 to 30 million Americans live in RCA communities. If the number of RCAs continues to grow, it is likely that proposals for state regulation will multiply, especially in the states with the largest concentrations of RCAs.

There are several issues that states might want to consider in determining whether to regulate RCAs. One of them is whether the state wants to permit private organizations to deliver services that are publicly provided to other citizens. States also might want to consider financial and managerial requirements for RCAs before permitting them to provide services, especially those that are very expensive. Consumer protection and education also are issues that states may want to review.

51. Is there relevant suggested state legislation?

The National Conference of Commissioners on Uniform State Laws has approved and recommended model legislation for condominiums, cooperatives, and common interest ownership.

The Uniform Condominium Act (UCA) was adopted by the Conference in 1977 and amended in 1980. Among the actual or potential problems addressed by the act were eminent domain, insurance, the rights and obligations of lenders on foreclosure of a condominium project, consumer protection, and association management issues. The 1980 amendments were primarily technical.

In 1980, the Conference adopted the Uniform Planned Community Act (UPCA). This is a comprehensive act designed to address the problems of both condominium and homeowners' association communities. It closely parallels the UCA and is designed to provide model legislation for common interest ownership communities regardless of how title to the common property is handled.

The Conference adopted the Model Real Estate Cooperative Act (MRECA) in 1981. As with the earlier acts, it is designed to aid consumers, developers and lenders in identifying rights and obligations applicable to all "common interest developments." This act, however, is devoted to cooperative ownership.

In 1982, the Conference adopted the Uniform Common Interest Ownership Act (UCIOA). This act consolidates the three earlier acts and adds some definitions.

Copies of all of the acts can be obtained from:

National Conference of Commissioners on Uniform State Laws
645 North Michigan Avenue, Suite 510
Chicago, Illinois 60611

Issues for Federal Officials

52. Will there be a need to reconsider the tax treatment of fees paid to RCAs?

RCA members may not deduct their dues and fees from federal personal income taxes, even when the money is used to fund services that substitute for public services. If RCA membership continues to grow, many voters may ask Congress to reconsider this prohibition.

53. Do HUD and VA review RCA projects before deciding whether to insure loans to homeowners?

Yes. HUD, through the FHA, and VA review RCAs to ensure that they are strong and viable. These agencies have requirements for analyzing the financial condition of RCAs before approving loan insurance.

The financial condition of RCAs is reviewed to make sure that they charge adequate fees, maintain adequate reserve funds, and correctly collect and use funds. RCAs also are reviewed with regard to litigation history because litigation can have an important impact on an RCA's financial condition.

HUD and VA also review RCA projects to make sure their documents do not pose any violations of fair housing laws.

54. How can hard times among RCAs affect HUD and VA mortgage insurance funds?

HUD and VA can refuse to insure loans in RCAs in an unsound financial condition. RCAs and developers generally prefer to have HUD and VA approval and frequently correct their financial problems in an effort to avoid rejection. A lack of HUD and VA approval tends to open projects to speculators and reduces the number of owner-occupied units. The presence of speculators is often associated with RCA financial problems, because speculators usually have little interest in the long-term financial viability of the association.

55. What other problems can occur?

Rivalry between RCA and non-RCA communities can involve the federal government in unexpected ways. For example, residents of the planned community of Reston, Virginia, pay association dues to Reston. But they are officially in the Herndon postal area. Zealous postal workers cross out Reston on envelopes and substitute Herndon, warning that mail may be delayed by the wrong address!

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The Commission is composed of 26 members—nine representing the federal government, 14 representing state and local government, and three representing the public. The President appoints 20—three private citizens and three federal executive officials directly and four governors, three state legislators, four mayors, and three elected county officials from slates nominated by the National Governors' Association, the National Conference of State Legislatures, the National League of Cities/U.S. Conference of Mayors, and the National Association of Counties. The three Senators are chosen by the President of the Senate and the three Representatives by the Speaker of the House of Representatives.

Each Commission member serves a two-year term and may be reappointed.

As a continuing body, the Commission addresses specific issues and problems, the resolution of which would produce improved cooperation among the levels of government and more effective functioning of the federal system. In addition to dealing with important functional and policy relationships among the various governments, the Commission extensively studies critical governmental finance issues. One of the long-range efforts of the Commission has been to seek ways to improve federal, state, and local governmental practices and policies to achieve equitable allocation of resources and increased efficiency and equity.

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After selecting specific intergovernmental issues for investigation, ACIR follows a multistep procedure that assures review and comment by representatives of all points of view, all affected levels of government, technical experts, and interested groups. The Commission then debates each issue and formulates its policy position. Commission findings and recommendations are published and draft bills and executive orders developed to assist in implementing ACIR policy recommendations.

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